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Part IV

Environmental Protection Agency

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 265

[SW-FRL 1636-2]

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities

AGENCY: Environmental Protection Agency.

ACTION: Amendment to interim final rule.

SUMMARY: On May 19, 1980, EPA promulgated regulations applicable to hazardous waste landfills which prohibited the landfilling of ignitable wastes as of November 19, 1980. On February 20, 1981, EPA amended the regulations to allow liquid ignitable wastes in containers to be disposed of in landfills until May 19, 1981, provided that the containers were landfilled in such a manner as to protect the wastes from any material or conditions which would cause them to ignite. EPA is today amending the regulations to allow the disposal of containerized liquid ignitable wastes in landfills until November 19, 1981, provided that the containers are landfilled in the manner specified in today's amendment to the regulations. Today's amendment also provides, without any time limitation, that solid ignitable wastes may be landfilled provided that they too are handled in a specified manner.

DATES: The amendment is effective on June 29, 1981. Comments are due on or before August 28, 1981.

ADDRESS: Comments should be addressed to Deborah Villari, Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460. Comments should identify the regulations docket as follows: "Docket No. 3004, Section 265.312". The official docket for this regulation is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: For general information, contact Kenneth Shuster, Office of Solid Waste (WH-564), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9125.

FOR INFORMATION ON IMPLEMENTATION CONTACT:

Region I, Dennis Huebner, Chief, USEPA, Radiation Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-5775

Region II, Dr. Ernest Regna, Chief, USEPA, Solid Waste Branch, 26 Federal Plaza, New York, NY 10007, (212) 264-0504/5

Region III, Robert L. Allen, Chief, USEPA, Hazardous Materials Branch, 6th and Walnut Streets, Philadelphia, PA 19106, (215) 597-0980

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Region IX, Harry Seraydarian, Chief, USEPA, Hazardous Materials Branch, 2125 Fremont Street, San Francisco, CA 94105, (415) 556-4606

Region X, Kenneth D. Feigner, Chief, USEPA, Waste Management Branch, 1200 Sixth Avenue, Seattle, WA 98101, (206) 442-1260

SUPPLEMENTARY INFORMATION:

I. Authority

This amendment is issued under the authority of Sections 1006, 2002(a) and 3004 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6905, 6912(a) and 6924.

II. Introduction

On May 19, 1980, EPA promulgated hazardous waste regulations in 40 CFR Parts 260-265 (45 FR 33066 *et seq.*) which established, in conjunction with earlier regulations promulgated on February 26, 1980 (45 FR 12721 *et seq.*), the principal elements of the hazardous waste management program under Subtitle C of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6921, *et seq.*). Part 265 of the May 19 regulations set forth standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities during the "interim status" period. Subpart N (§§ 265.300-265.339) of those regulations established interim status standards applicable to landfills.

Section 265.312 of these standards provides in part that ignitable or reactive waste must not be placed in a landfill, unless the waste is treated, rendered, or mixed before or immediately after placement in the landfill so that the resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under §§ 261.21 and 261.23. The regulation further requires that the treatment discussed in § 265.312 meet the general standards as discussed in § 265.17(b). This regulation, promulgated as interim final, became effective on November 19, 1980.

On February 20, 1981, based on claims by the regulated community that no practical alternatives existed, EPA amended § 265.312 to allow liquid ignitable wastes in containers to be disposed of in landfills until May 19, 1981, provided that the containers were landfilled in such a manner that the wastes were protected from any material or conditions which would cause the waste to ignite. In the preamble to the February 20, 1981 rule, EPA gave notice that the Agency was not willing to further extend the deadline unless it received convincing evidence that such an extension was necessary.

On March 25, 1981, EPA held a public hearing on the February 20, 1981 amendment. This meeting was well attended by a cross-section of people affected by this amendment. The public comment period for the February 20 amendment closed on April 10, 1981. The Agency received 50 written comments on this amendment. Based on evaluation of the statements made at the public hearing and the comments received, the Agency has now decided to further amend 40 CFR 265.312. Today's amendment extends the date of compliance for the ban on disposing containerized liquid ignitable wastes in landfills until the date of compliance for § 265.314 (November 19, 1981), which bans the disposal of all containerized liquid hazardous wastes. However, when handling containerized liquids, special handling requirements, including the placement of daily cover, must be observed. These requirements are specified in today's amendment. Additionally, today's amendment to § 265.312 will allow the disposal of containerized solid ignitables wastes, subject to specified handling requirements. No time limitation is being placed today on the landfilling of solid ignitables in containers.

III. Landfilling of Ignitable Wastes

The basis for the prohibition on disposing of ignitable wastes in landfills was that the ignitable waste would pose a continuing danger of ignition after disposal and would require continuing protection from conditions which would cause them to ignite. On February 20, 1981, EPA amended the May 19, 1980 regulations to allow the disposal of containerized liquid ignitable wastes in landfills provided that certain precautions were taken. In that amendment, EPA expressed its concern about the environmental risks associated with the disposal of ignitable wastes in landfills. These wastes, when placed in a landfill, increase the potential for a fire. Fires themselves emit toxic fumes and other pollutants and may trigger sometimes violent ignition of other ignitable wastes. Fires in landfills, therefore, pose both safety and health hazards.

The comments on the February 20, 1981 amendment were mixed as to the desirability of landfilling ignitable wastes. Several commenters contended that the practice of placing containerized liquid ignitable wastes in landfills is dangerous from both immediate and long-term perspectives. These commenters stated that drum leakage is inevitable, and that the wastes leaking from the containers would be highly mobile because of their liquid state, having the potential for migration beyond the confines of the disposal point. The commenters argued that sparks could ignite the leaking ignitable wastes, causing major fires at the landfill.

Additionally, some comments were received which relate to containerized liquid wastes in general, as well as liquid ignitable wastes. For example, commenters stated that many of these liquid ignitables (typically the organic classes) are known to have adverse effects on both clay and synthetic liners, if present. Effects can range from an alteration of physical properties (e.g., the alteration of the permeability characteristics of liner materials) to actual liner disintegration. Other commenters stated that upon drum degradation, the liquid contents would be expelled. This would result in void spaces which could cause major subsidence and breaches in the facility's cap. Such effects would increase the infiltration of water into the facility and consequently the volume of leachate. Another commenter warned of the dangers of high vapor pressure organics escaping into the air from the landfills.

Other commenters disagreed, stating that landfilling of liquid ignitable wastes in containers is a safe practice provided that proper precautions are taken such as those required by § 265.312(b). They contended that there are no case histories of fires being caused in properly managed chemical landfills. They noted that the fires discussed in EPA's Background Document for § 265.312 all occurred at municipal landfills, where liquid ignitable wastes were carelessly landfilled together with paper and other combustible wastes, not at "secure chemical landfills." These commenters suggested that the municipal wastes were primarily reponsible for the fires. Furthermore, they felt that where wastes are covered with soil, insufficient oxygen is available for combustion of the buried wastes.

The Agency continues to believe that landfill disposal of ignitable wastes involves some risk although perhaps a lesser risk at well managed chemical landfills than at typical municipal landfills. In any event, the Agency is compelled to allow the disposal of liquid and solid ignitable wastes for the near future due to the lack of adequate treatment and disposal alternatives as discussed in Section IV of this preamble. The Agency believes that the requirements included in this amendment will minimize the risk of ignition for these types of wastes when disposed in properly managed hazardous waste landfills.

The Agency remains concerned about the general problems caused by all types of liquids being disposed of in landfills. These problems are addressed in § 265.314 which prohibits, as November 19, 1981, the disposal of containerized liquids in landfills. Its purpose is to reduce the presence of liquid wastes and free liquids in a landfill. As discussed at 45 Fed. Reg. 33213 (May 19, 1981), liquids can migrate through a landfill, dissolving or mobilizing toxic substances in the process. In other words, liquids in a landfill usually become a transport and leaching medium. In the case of containerized liquid wastes, the containers eventually degrade, allowing the liquids to escape and create voids which can cause slumping and subsidence of the landfill cover. This may increase the infiltration of precipitation and can also result in the escape of wastes through cracks or fissures in the final cover. Several commenters noted this occurrence and their comments were summarized above.

However, once again, the Agency believes that due to the lack of treatment and disposal options for liquid ignitable wastes prior to November 19, 1981 (as discussed below), the disposal of containerized liquid ignitable wastes in landfills should be allowed. Section § 265.313, which remains in effect, should provide protection from risks of adverse effects from landfill disposal of incompatible wastes, such as the potential for adverse effects on landfill liners by liquid ignitable wastes.

The Agency believes that containerized solid ignitable wastes do not cause the same problems of leachate generation and subsidence as do containerized liquid ignitable wastes. Therefore, solid ignitable wastes can be disposed of in landfills provided that they are disposed of in compliance with the requirements included in this amendment. These requirements, specifying the proper management of solid ignitable wastes, should minimize the possibility of fires. A further reason for allowing solid ignitable wastes in landfills is the lack of treatment and disposal options currently available for these types of wastes (as discussed below).

IV. Alternative Means for Treating, Recycling or Disposing of Ignitable Wastes

Comments were specifically solicited in the February 20, 1981 amendment on the availability of alternatives to landfilling of liquid ignitable wastes. Commenters discussed incineration, solvent recovery, and deep well injection. According to many of the comments received, available alternatives for recycling or disposing of ignitable wastes depend upon the nature of the wastes. Certain ignitable wastes are amenable to reclamation, incineration, or use as fuel. The commenters indicated that these wastes are in fact generally reclaimed, incinerated, or used as fuel. However, many ignitable wastes, generally characterized by high viscosity, significant metal concentrations and high solids content, cannot be incinerated, reclaimed, or used as fuel. Also included in this category of "problem wastes" is the residue remaining after reclamation. Disposal of problem wastes is limited by both technological constraints and a shortage of available facility capacity for handling these wastes.

In general, it is the wastes that operators of reclamation and incineration facilities refuse to accept that go to landfills. One commenter stated that 20 million gallons of ignitable wastes are produced annually by the paint and coating industry. Of this 20 million gallons, approximately half are "problem" wastes characterized by high

viscosity, high solids content and heavy metals contamination. The remaining 10 million gallons are reused or recycled. Over 5 million of these are reclaimed by off-site solvent recycling facilities.

The specific characteristics of these problem wastes that create difficulties in treating, recycling or disposing them are discussed in greater detail below.

A. Incineration

The major option discussed by commenters was incineration. First, many commenters contended that in parts of the United States, particularly the western half of the country, few or no commercial hazardous waste incinerators exist. Several commenters disputed the data set forth in the Booz, Allen and Hamilton report entitled *Hazardous Waste Generation and Commercial Hazardous Waste Management Capacity—An Assessment* (Dec. 1980, SW 894), referred to in the preamble to the February 20, 1981 amendment. These commenters argued that the number of available commercial incinerators and incinerator capacity for incinerating any type of waste is significantly less than that set forth in the Booz-Allen report.

In those areas where commercial incinerators are not available, commenters stated that generators would have to transport wastes considerable distances to be incinerated (e.g., from the West Coast to Texas or the Midwest), thereby increasing the risks involved in transportation. However, two landfill operators, one on the East Coast and one on the West Coast, indicated that their firms receive large quantities of liquid ignitable wastes in drums from more than 1,000 miles away. Thus, in terms of transportation safety, commenters did not present clear distinctions between the options of landfilling and incineration. Additionally, through compliance with RCRA regulations governing transporters of hazardous waste (40 CFR Part 263) and Department of Transportation regulations governing the transportation of hazardous materials (40 CFR Parts 171–179), the transportation of wastes for incineration should not present unreasonable safety risks.

One landfill operator in Alabama commented that many generators in New England currently transport ignitable wastes to Alabama, passing more closely located incineration facilities. According to the commenter, the combined transportation and landfill disposal costs exceed incineration costs. The commenter concluded that the incinerators are unwilling or unable to accept these generators' wastes.

Comments were mixed as to the availability of incineration capacity for easy-to-incinerate ignitable wastes in the East and Midwest. However, no commenters disputed the lack of incineration capacity for ignitable wastes in the West Coast area. While some commenters contended that there is inadequate incinerator capacity, other commenters stated that many incinerators are being underutilized. One incineration facility operator stated that from November 19, 1980, to March 12, 1981, there was a 96% under-utilization of his facility. Another incinerator operator stated that in the two years of his facility's existence, it has never operated at full capacity due to insufficient clientele. The latter commenter added that very few restrictions are placed on the type of waste which will be accepted. However, material is taken only in bulk; drummed ignitable waste is not accepted.

The major difficulty raised with respect to incineration concerns not the total available national or regional capacity of incinerators but the capacity to incinerate "problem" ignitable wastes. Commenters (including some incinerator operators) stated that liquid injection incinerators cannot handle liquid wastes with high viscosity, or high solid or heavy metal content. According to these commenters, waste handling ability is constrained by the type of nozzles which are presently used in liquid injection incinerators. These nozzles become plugged if liquids with high solid content are injected into an incinerator. Another constraint on waste handling ability, according to commenters, is State air pollution regulations. Many State regulations may limit such characteristics as the halogen content as ash content of wastes accepted by incineration facilities. These regulations may in some cases be complied with by installing air pollution equipment, such as scrubbers or electrostatic precipitators. However, many incinerators may not presently have such equipment and thus cannot accept these wastes.

Another problem raised by commenters is that incineration facilities generally refuse to accept small quantities of ignitable waste such as two to four 55-gallon drums. One such commenter stated that it has so far been unable to locate incinerators willing to handle such small quantities of ignitable wastes.

A second type of commercial incinerator currently used is the rotary kiln incinerator. These incinerators can handle liquid, semi-solid and solid wastes. However, according to the commenters, there are only a few such commercial incinerators in the United States and these appear to be operating near full capacity. This statement is consistent with the limited information available to the Agency at this time. Indeed, shortly before publication of this amendment, one of the few such incinerators known to EPA was closed at least temporarily due to severe equipment damage.

Even the few operating rotary kilns cannot burn metal drums. Thus, they must be fed either bulk waste or waste in combustible containers. One rotary kiln incinerator operator stated that his facility has some excess capacity though not enough for all ignitable wastes. However, this facility does not presently have excess capacity to empty waste from metal drums for introduction into the kiln. This same incinerator operator suggested that generators should be required to use fiber drums, to modify their processes so as to produce less waste, and to separate liquids from solids by inexpensive settling methods. He contended that these actions would reduce incinerator capacity problems. However, no commenters provided any information concerning the amount of volume reduction which could be achieved by process modification and liquids/solids separation, or the total impact on ignitable waste treatment and disposal capacity which could be achieved by waste packaging requirements.

B. Recovery, Reuse and Reclamation

While solvent recovery or reclamation is a practicable and environmentally preferable option for some types of wastes, it appears that for many types of ignitable wastes it is not a viable alternative. Commenters contended that cleaner ignitable wastes generally are already reclaimed as solvents, burned in liquid injection incenerators or used as fuel. The commenters cited specific examples in this regard. One commenter stated that the majority of the less viscous wastes are either taken in bulk to cement kilns for use as fuel or sent to waste incineration facilities. Another commenter (a generator) stated that their drummed solvent wastes are sent to a recycler. All drums of solvents which can be feasibly handled are recycled. All drums of materials which cannot be recycled or reclaimed are disposed of by chemical landfill burial. Furthermore, commenters suggested that generators are able to use or sell these cleaner liquid ignitables for reclamation or use as fuel, thereby avoiding the expense of disposal. Thus, there already exists a substantial economic incentive

to reclaim or burn liquid ignitable wastes whenever feasible.

Several solvent recovery firms submitted comments to EPA opposing the ban on landfilling of these wastes. They stated that while they accept and treat liquid ignitable wastes, they can only treat the waste to a certain extent. They send the residue, which is of a semi-solid or solid consistency, to landfills, which they contend is their only disposal option.

For example, one recycling plant operator commented that his plant presently recycles approximately 250,000 gallons of solvents and chemicals per month. The residual still bottoms, resulting from the recycling, amount to approximately 60,000 gallons per month. Out of the 60,000 gallons of still bottoms, the recycling plant is able to further process approximately 25,000 gallons to complete dryness, which they then dispose of in bulk at a landfill. This leaves the recycling plant with approximately 35,000 gallons of ignitable still bottoms which must be disposed of in drums in a landfill.

Two other solvent recyclers stated that they send 10,000 gallons per day and 10,000 cubic feet per month, respectively, of ignitable wastes to landfills. This includes their still bottoms plus certain other wastes that are not amenable to further recovery.

Some liquid ignitable wastes are generally not accepted by reclaimers due to insufficient solvent content. The Agency received no comments contending that all liquid ignitable wastes could be treated by solvent recovery.

C. Deep Well Injection

Commenters indicated that the problems regarding liquid ignitable wastes which occur with incinerators occur to the same or greater extent with deep well disposal. Deep wells for hazardous waste injection are available in even fewer regions of the country than incinerators. Furthermore, the Agency agrees with commenters who stated that waste characterized by high solids and high viscosity are not capable of disposal by deep well injection. These wastes, according to commenters, are the same wastes that, as described above, are not amenable to reclamation or liquid injection incineration. It is for these wastes that many commenters felt that land disposal is currently the only feasible disposal alternative.

V. Treatment of Ignitable Wastes To Render Them Non-ignitable

Section 265.312 allows ignitable waste to be placed in a landfill if it is treated, rendered, or mixed before or immediately after placement into the landfill so that the resulting waste or mixture no longer meets the definition of ignitable wastes. Many commenters discussed this option.

The general approach mentioned by commenters is to open or drill a hole in each waste container and place into the drum some absorbent material (e.g., cement kiln dust, fly ash dust, or Fuller's earth). If properly done, this has two results. First, it raises the flash point of the waste, thereby rendering the waste less ignitable than before. Second, it may solidify a liquid ignitable waste. It is possible, as a result of this latter feature, to convert a liquid ignitable waste into a solid non-ignitable waste (based on the general characteristic for solid ignitable waste) even when the flash point has been raised only slightly. This is because flash point is not a determinative factor for non-liquid ignitable waste. (See the characteristic of solid ignitable waste at 40 CFR 261.21(a)(2). The issue of the definition of ignitables is discussed in more detail below.)

Commenters raised several questions concerning the procedure described above. First, they asked how well the added material and ignitable liquid must be mixed in order for the entire contents of the drum to be considered or whether each sample from the drum must be evaluated separately.

Commenters also asked whether the insertion of absorbent materials into drums to render the contents non-ignitable is "treatment" requiring a permit or interim status. The definition of "treatment" in § 260.10 includes methods "designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material resources from the waste, or so as to render such waste non-hazardous or less hazardous; safer to transport, store, or dispose of; or amenable for recovery, amenable for storage or reduced in volume." Commenters noted that many generators of ignitable wastes do not have interim status as treatment facilities and thus would not be allowed to mix absorbent materials into drums if this process were considered "treatment" under the above definition. As discussed below, these issues are not being resolved by EPA in today's amendment but will be in the near future.

Apart from the procedural issues discussed above, commenters questioned the desirability and feasibility of opening drums and adding absorbent materials. Some argued that the safety hazards to workers opening drums would exceed the hazards resulting from landfilling liquid ignitable wastes in drums. However, several major landfill operators who accept these wastes stated that they are in the process of developing safe drum opening capability. Some stated that they needed at least until November 19, 1981. Others asked for an additional two years to fully develop this capability, although they did not present facts that they could not develop this capability by November 19, 1981. The Agency, however, believes that there has been sufficient lead time to develop safe treatment capabilities by November 19, 1981 since the prohibition was promulgated on May 19, 1980.

VI. Today's Amendment

A. Liquid Ignitable Wastes

After carefully reviewing the comments on the February 20, 1981 amendment to § 265.312, the Agency has decided that a further extension of time to allow the disposal of containerized liquid ignitable wastes in landfills is needed. In the preamble to the February 20, 1981 amendment, the Agency expressed its concern that a significant number of generators and landfill operators were unable to comply with the November 19, 1980 deadline for landfilling such waste. This concern was based upon the apparent unavailability of adequate alternatives to treat or dispose of some types of liquid ignitable wastes or the capacity to safely render these wastes non-ignitable. The comments received on the February 20, 1981 amendment have raised serious doubt over whether adequate alternatives exist and whether they could be made available by May 19, 1981.

The Agency is now convinced that § 265.312(a) could not be complied with by May 19, 1981, due to the lack of practical alternative management methods and available techniques that can safely render liquid ignitable wastes non-ignitable. Although some commenters are developing special drum handling and decanting equipment in order to comply with § 265.312(a), an adequate supply of these systems will not be operational until November 1981 at the earliest. To provide enough time for completing construction of drum handling and decanting equipment and the development of other treatment and disposal options, the Agency is granting a further extension to § 265.312(a) until the date of compliance for 40 CFR § 265.314, the ban on containerized liquids in landfills. The purpose of § 265.314, as mentioned above (and

discussed more fully in 45 FR 33213–33215), is to prevent subsidence and associated problems which will eventually result when liquids leak out of containers. Waste treatment and stabilization processes being developed and implemented to comply with the November 19, 1981 prohibition imposed by § 265.314 will be available to generators and disposers of liquid ignitable wastes in meeting the deadline being imposed by today's amendment.

The extension of the compliance deadline for liquid ignitable wastes is being granted subject to the same conditions that were stated in the February 20, 1981 amendment with the exception that cover is now required daily rather than at an unspecified frequency. Liquid ignitable wastes may be placed in a landfill without being treated to render them non-ignitable only if:

(1) they are placed in the landfill in non-leaking containers;

(2) they are carefully handled and placed in the landfill so as to avoid heat, sparks, rupture or any other condition that might cause ignition before or during placement.

(3) they are covered *daily* with soil or other suitable non-combustible material to minimize the potential for ignition; and

(4) they are not placed in landfill cells which contain or will contain other wastes that could generate heat sufficient to produce temperatures that exceed the flash point of the liquid ignitable wastes.

The Agency believes that these precautions will provide protection of human health and the environment from fires in landfills until the prohibition against landfilling liquid ignitable wastes in containers must be complied with. The amended regulation requires precautionary procedures to prevent ignition during both handling and placement, and minimizes the potential for ignition of the wastes after placement in a landfill by requiring daily cover and prohibiting co-disposal with wastes that could, at present or in the future, cause ignition. The liquid ignitable waste containers must be non-leaking and handled to avoid rupture during placement in the landfill.

Using a cover consisting of soil or other appropriate material and segregating incompatible wastes in the landfill will limit exposure of wastes to conditions which could cause ignition. Cover must be placed at least *daily* over each row or layer of containers, as is the generally accepted practice. "Other suitable non-combustible material" is allowed as cover instead of or in addition to soil, since other materials such as industrial sludges or wastes may sometimes be used effectively. Wastes used to cover ignitable wastes must not be hot or able to generate enough heat to ignite the waste (e.g., by focussing solar heat).

B. Solid Ignitable Wastes

As a result of re-evaluating the entire problem of ignitable wastes, the Agency has also now determined that the landfilling of solid ignitable wastes should not be prohibited in all cases. Like "problem" liquid ignitable wastes, these wastes are often not easily incinerable nor suitable for recovery and are generally not accepted by operators of incinerators and recovery facilities.

The Agency believes that human health and the environment will be protected when the solid ignitable waste is landfilled in a manner which substantially reduces the possibility of ignition. This procedure is the same as that required for the landfilling of liquid ignitable waste, including the requirements of landfilling these wastes in containers, daily cover, special handling, and segregation.

The Agency strongly encourages generators, owners and operators to continue to recover and burn those liquid and solid ignitable wastes which can be recovered or incinerated. Today's amendment will allow landfilling under controlled conditions of those ignitable wastes which are not accepted by waste recovery or incineration facilities because of their high solids content or other technical reasons. Additionally, the Agency believes that the exemption for landfilling solid ignitable wastes is appropriate only until such time as alternative treatment or disposal options exist.

VII. Issues Not Being Resolved Today

In both the comments and the public hearing several peripheral issues connected with § 265.312 were raised. The problem areas identified were:

(1) lab-pack wastes;

(2) reactive wastes;

(3) the definitions of the terms liquid, solid, and solid ignitable waste; and

(4) whether a treatment permit is necessary to mix (absorb) a liquid waste to render it non-liquid.

These issues will be discussed briefly below. However, in general no resolution has been reached at this time. The Agency acknowledges that these areas raise some important questions which require further evaluation. The Agency is currently looking into these areas and working on solutions to them. Although some of these issues need to be resolved prior to November 19, 1981, the Agency is of the opinion that these issues need not be resolved at this time in order to proceed with today's amendment.

A. Lab-Pack Wastes

Many commenters discussed the special problems relating to laboratory wastes produced by schools, research institutions and industry. These wastes typically consist of a variety of different waste types produced in small volumes, each of which may have different characteristics including ignitability. The lab-pack procedure involves the layering of small sealed containers of lab waste inside a drum filled with large quantities of an absorbent material, usually vermiculite

The commenters pointed out that incinerators and recovery operations generally refuse to accept lab-pack wastes due to their small volumes, toxicity, and wide variability in chemical characteristics. In the past, a common laboratory practice was to dump these wastes down the drain and consequently into the sewer system. Commenters argued that landfilling of lab-packs is superior to such a practice and constitutes environmentally sound disposal.

B. Reactive Wastes

A few commenters requested that reactive wastes be allowed in landfills. One commenter specifically requested that EPA allow the disposal of cyanide- or sulfide-bearing wastes in landfills. Commenters also stated that the definition of reactivity is too vague. However, little information on the problems concerning this prohibition was submitted.

C. Definition of the Terms Liquid, Solid, and Solid Ignitable Waste

Section 261.21 contains several definitions of ignitable waste. If the waste is liquid, it is considered ignitable if its flash point is below 140° F. If it is solid, it is considered ignitable if it "is capable, under standard pressure and temperature, of causing fire through friction, absorption of moisture or spontaneous chemical changes and when ignited, burns so vigorously and persistently that it creates a hazard." Two other characteristics of ignitablility are set forth to include some compressed gases and oxidizers as ignitable wastes.

Several commenters stated that the narrative definition for solid ignitable wastes is so vague that in some cases it is difficult to determine whether a waste is subject to the prohibition in § 265.312.

Other commenters asserted that the definition of ignitable wastes included some materials which flash below 140° F but are incapable of sustaining combustion. Examples provided include some paint sludges and mixtures. The commenters contended that such wastes should not be included in the prohibition contain in § 265.312.

A point of particular concern was the distinction between solid and liquid ignitable wastes in § 261.21. Commenters noted that EPA has not defined "liquid" and "solid" for purposes of this distinction. Therefore, they contend, members of the regulated community do not know what test or criteria to apply to borderline wastes such as sludges or highly viscous "liquids". Because a single waste may, for example, be ignitable under the liquid test and non-ignitable under the solid criteria, commenters felt that a clear, scientifically based distinction must be established by EPA between solid and liquid ignitable wastes.

D. Whether a Treatment Permit Is Needed To Mix (Absorb) a Liquid Waste To Render it Non-Liquid

As discussed above, the issue of the addition of absorbent to liquid ignitable waste was a concern of the commenters. The first question that this process raises is whether the resulting mixture is a solid and therefore subject to the narrative test for ignitability contained in § 261.21(a)(2). The second question raised by commenters is whether the process of adding absorbent material to liquid ignitable waste constitutes "treatment" (as defined in 40 CFR 260.10), thereby requiring a treatment permit or interim status.

VIII. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this statutory requirement is to allow persons affected by the regulations sufficient lead time to prepare to comply with major new regulatory requirements. Today's amendment, however, does not impose a new requirement but rather suspends a pre-existing requirement because it cannot yet be complied with by the regulated community. Since an effective date six months after promulgation would defeat the purposes of today's amendment, the Agency is making it effective immediately.

IX. Regulatory Analysis

Section 3(b) of Executive Order 12291, 46 FR 13193 (February 19, 1981) requires EPA to initially determine whether a rule that it intends to propose or issue is a major rule and to prepare regulatory impact analyses for all major rules.

EPA has determined that the amendment being promulgated today is not a major rule. As discussed above, this amendment will extend the period for which the ban on landfill disposal of ignitable waste (promulgated May 19, 1980) is suspended. As such, it increases the disposal options available to generators and disposers of ignitable waste by temporarily suspending a previously imposed prohibition. Accordingly, a Regulatory Impact Analysis is not being prepared for this amendment.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities so as to require a regulatory analysis. The temporary suspension created by this amendment should reduce the burden of compliance with the hazardous waste disposal regulations for small entities. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

Dated: June 22, 1981.

Anne M. Gorsuch,

Administrator.

40 CFR Part 265 is amended as follows:

1. The authority citation for Part 265 reads as follows:

Authority: Sections 1006, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), and 6924).

2. Section 265.312 is revised to read as follows:

§ 265.312 Special requirements for ignitable or reactive waste

(a) Except as provided in paragraphs (b) and (c) of this Section, ignitable or reactive waste must not be placed in a landfill, unless the waste is treated, rendered, or mixed before or immediately after placement in the landfill so that:

(1) The resulting waste, mixture, or dissolution of material no longer meets the definition of ignitable or reactive waste under §§ 261.21 or 261.23 of this Chapter, and

(2) Section 265.17(b) is complied with.

(b) Until the compliance date for the ban on landfilling liquid hazardous wastes contained in § 265.314 of this Chapter liquid ignitable wastes in containers may be landfilled without meeting the requirement of paragraph (a) of this section, provided that the wastes are disposed in such a way that they are protected from any material or conditions which may cause them to ignite. At a minimum, these liquid ignitable wastes must be disposed in non-leaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; must be covered daily with soil or other non-combustible material to minimize the potential for ignition of the wastes; and must not be disposed in cells that contain or will contain other wastes which may generate heat sufficient to cause temperatures equal to or exceeding the flash point of the wastes.

(c) Solid ignitable wastes in containers may be landfilled without meeting the requirement of paragraph (a) of this section, provided that the wastes are disposed in such a way that they are protected from any material or conditions which may cause them to ignite. At a minimum, these solid ignitable wastes must be disposed in non-leaking containers which are carefully handled and placed so as to avoid heat, sparks, rupture, or any other condition that might cause ignition of the wastes; must be covered daily with soil or other non-combustible material to minimize the potential for ignition of the wastes; and must not be disposed in cells that contain or will contain other wastes which may generate heat sufficient to cause ignition of the waste.

[FR Doc. 81-19060 Filed 6-26-81; 8:45 am]

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DOT/UMTA			DOT/UMTA	
CSA			CSA	

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Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408.

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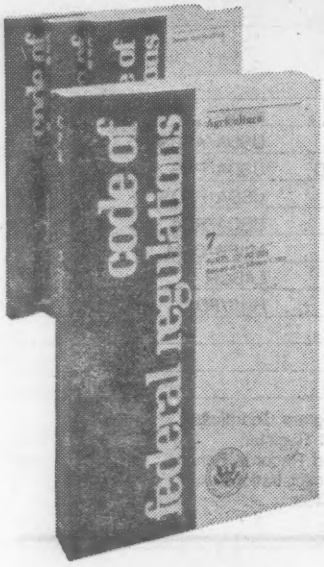

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